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In the

Supreme Court of the United States

No. 81-2370
October Term, 1981

Connie Louise Lascano ..... *Petitioner*

V.

State of Arkansas ..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER POLICE OFFICERS WERE REQUIRED TO GIVE PETITIONER *MIRANDA* WARNINGS WHERE THE INVESTIGATION HAD NOT FOCUSED ON PETITIONER AND THE INTERVIEW WAS NOT CUSTODIAL?

II. WHETHER PETITIONER'S STATEMENT WAS TAKEN IN VIOLATION OF HER FIFTH AND FOURTEENTH AMENDMENT RIGHTS AGAINST SELF-INCRIMINATION?

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MISCELLANEOUS

Rules of the Supreme Court of the United States effective June 30, 1980, Rule 17 7

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Respondent, State of Arkansas, responds to petitioner's petition for writ of certiorari to the Supreme Court of Arkansas.

OPINIONS BELOW

The opinion of the Arkansas Supreme Court affirming petitioner's conviction is reproduced in the appendix of the petition for certiorari.

JURISDICTION

The petitioner has adequately set forth the jurisdictional grounds.

CONSTITUTIONAL PROVISIONS INVOLVED

The relevant constitutional provisions were stated by petitioner.

SUMMARY OF ARGUMENT

The petitioner seeks to relitigate in this Coiurt the lawfulness of her confession. The Fifth Amendment does not require that every conversation between a police officer and a citizen in a police station be preceded by the giving of *Miranda* warnings. The petitioner was advised of her rights several times before she confessed to the murder of her lover's wife. The state court properly considered federal law in determining that the petitioner's confession was admissible.

I.

THE POLICE OFFICERS WERE NOT REQUIRED TO GIVE PETITIONER *MIRANDA* WARNINGS WHERE THE INVESTIGATION HAD NOT FOCUSED ON PETITIONER AND THE INTERVIEW WAS NOT CUSTODIAL.

On Saturday, October 25, 1980, the body of Mrs. Hunt was discovered. As part of the general investigation, persons who were familiar with the deceased were asked to come to the sheriff's office. The petitioner was asked to come to the sheriff's office. She was interviewed by a state police investigator in an office at the sheriff's office.

She was asked general questions such as her name and address and whether she was familiar with the deceased. She was asked when she had last seen the deceased. Her answer that she had last seen the deceased at 8:30 p.m. on Friday alerted the officer that petitioner might be a suspect. He immediately advised petitioner of her *Miranda* rights. *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed.2d 694, 88 S.Ct. 1602, 10 ALR 3d 1060 (1966).

She gave a non-incriminating statement. During the evening, the police developed other evidence which provided probable cause for the arrest of the petitioner.

The following day she gave a statement in which she admitted killing the deceased and directing the police to the murder weapon. The petitioner asserted in the state courts that her full confession was the fruit of her incriminating admission. This argument was rejected by the trial court and the Arkansas Supreme Court.

The Constitution does not require that every conversation between a police officer and a citizen be preceded by the giving of *Miranda* warnings. Under the decisions of this Court, a citizen must be advised of his rights if a police investigation has focused upon him, *Escobedo v. Illinois*, 378 U.S. 478 (1964) or if the interview is "custodial". *Miranda v. Arizona, supra.* See, also, *Malone v. State*, 361 So.2d 674 (Ala. App. 1978), *cert. denied*, (Ala.) 361 So.2d 691, *cert. denied*, 439 U.S. 1081, 59 L.Ed.2d 50, 99 S.Ct. 863 (1979).

Based on the testimony at the hearing on motion to suppress, the trial court found that the incriminating admission was admissible. The Arkansas Supreme Court affirmed, finding that *Miranda* warnings are only required where the person has been arrested or suspicion has focused upon the person. (Petitioner's Petition for Certiorari, A-4)

The Arkansas courts correctly applied the principles announced by this Court. The fact that this initial interview occurred at the sheriff's office does not render this exchange a "custodial interrogation." This Court has had the occasion to define "custodial interrogation" in *Oregon v. Mathiason*, 429 U.S. 492, 50 L.Ed.2d 714, 97 S.Ct. 711 (1977). There this Court held that the interview of a parolee at a police station was not custodial, stating:

> "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 US, at 444, 16 L.Ed.2d 694, 86 S.Ct. 1602, 10 Ohio Misc. 9, 36 Ohio Ops.2d 237, 10 ALR3d 974.

> * * *Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody." It was *that* sort of coercive environment to which Miranda by its terms was made applicable, and to which it is limited.

The finding of the state courts that petitioner's freedom had not been restricted should be accorded great weight. *Sumner v. Mata*, 449 U.S. 539, 66 L.Ed.2d 722, 101 S.Ct. 764 (1981).

The petitioner has not raised new or significant questions concerning the application of the Fifth Amendment to state criminal procedure which need to be addressed and resolved by this Court.

II.

PETITIONER'S STATEMENT WAS NOT TAKEN IN VIOLATION OF HER FIFTH AND FOURTEENTH AMENDMENT RIGHTS AGAINST SELF-INCRIMINATION.

The respondent will discuss the arguments raised in Points II and III of the Petition for Certiorari in this Point II.

The appellant's conviction of First Degree Murder was based in part on her confession which was held admissible after a pre-trial evidentiary hearing.

On October 26, 1980, the petitioner was twice advised orally and in writing of her rights as required by *Miranda supra*. On the following day the sheriff interrogated the petitioner. Although he did not again give the *Miranda* warnings, he did inquire whether petitioner remembered the warnings given on the previous evening. She responded that she remembered the warnings. During this interrogation the appellant admitted killing Mrs. Hunt.

Contrary to petitioner's assertion, the law does not require that *Miranda* warnings be repeated each time officers question a person. *United States ex rel. Henne v. Fike*, 563 F.2d 809, 814 (7th Cir. 1977), *cert. denied, Henne v. Fike*, 434 U.S. 1072, 98 S.Ct. 1257, 55 L.Ed.2d 776 (1977); *Sossamon v. State*, 245 Ark. 306, 432 S.W.2d 469, 471 (1968); *People v. Siervers*, 255 Cal. App. 2d 34, 62 Cal. Rptr. 841 (Cal. App. 1967).

Subsequently, the petitioner was interviewed by a state police officer. At the beginning of this interview, petitioner was again advised orally and in writing of her rights as required by *Miranda*. She then made a written confession which was received in evidence as a state's exhibit. Under the circumstances it is difficult to say that petitioner's confession was made without there having been proper warnings.

The petitioner argued in the state courts that her confession was involuntary because it was the product of psychological intimidation. The essence of this argument that her will was overborn because of the sheriff's threat to arrest and interrogate Ben Hunt, petitioner's lover. The trial court rejected that argument finding that petitioner had made a rational decision to protect her lover by confessing and claiming all responsibility for the killing. This finding of fact was based upon the trial court's resolution of the credibility of the witnesses. The findings of fact made by the state court are presumptively correct. *Sumner v. Mata, supra*. Certiorari is not intended to provide a forum for the relitigation of factual questions determined by the state courts.

It is clear that the trial court and the Arkansas Supreme Court applied the appropriate constitutional standards in determining that petitioner's confession was admissible. The petitioner's argument presents no new or novel questions of law which need to be addressed by this Court.

CONCLUSION

None of the basis for granting certiorari set forth in Rule 17, Rules of the Supreme Court of the United States are present. Therefore, the respondent requests this Court deny writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, ARNOLD M. JOCHUMS, Assistant Attorney General, do hereby certify that I have served a copy of the foregoing pleading, by mailing a copy of same by United States Mail, postage prepaid, to Mr. Jeff Duty, 204 South Third Street, Rogers, Arkansas 72756, petitioner's attorney of record, this 22nd day of September, 1982.

ARNOLD M. JOCHUMS